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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE PACIFIC FERTILITY CENTER
LITIGATION

This Document Relates to:
No. 3:18-cv-01586
(A.B., C.D., E.F., G.H., and I.J.)

Master Case No. 3:18-cv-01586-JSC

**PLAINTIFFS' MOTION IN LIMINE NO. 6:
NON-PARTY FINANCES AND OWNERSHIP**

Pretrial Hearing: April 29, 2021
Time: 2:00 p.m.
Judge: Hon. Jacqueline S. Corley
Place: Courtroom F, 15th Floor

Trial Date: May 20, 2021

INTRODUCTION

Evidence of a company’s financial status is inadmissible under Rules 401 and 403 of the Federal Rules of Evidence where it bears no relevance to the issues at trial. Yet in advance of this trial, Chart has designated as a trial exhibit a web article about Prelude Fertility titled “This \$200 million start-up wants to stop your biological clock.” (Trial Ex. 183.) The article, which identifies the amount and source of Prelude Fertility’s private equity funding, should be excluded at trial because it serves no purpose other than to suggest that Prelude, a non-party on which Chart will ask the jury to pin fault, has deep pockets from which Plaintiff could collect a hypothetical judgment. For this reason, Chart should be precluded from introducing evidence relating to Prelude’s assets, capital funding, or ownership at trial, as well as questioning witnesses about or otherwise referencing such assets.

ARGUMENT

Trial Exhibit 153 in the joint exhibit list submitted by the parties is a 4-page article recounting the founding and mission of Prelude, the parent company of Pacific Fertility Center and Pacific MSO (collectively, PFC). Several portions of the article are particularly concerning because of their risk of prejudice and lack of relevance, including:

- References to Prelude as a “\$200 million start-up” (*id.* at 1);
- Description of Prelude’s founder Martin Varsavsky’s “\$200 million ... shopping spree,” in which he reportedly used money “raised from private equity fund Lee Equity to buy up” fertility clinics like PFC (*id.* at 2); and
- Description of Varsavsky as a “serial entrepreneur” (*id.* at 1).

First, trial courts have been clear that evidence of a non-party’s wealth, valuation, or financial status are barred when not relevant to any issue in the case. *See Castrillon v. St. Vincent Hosp. & Health Care Ctr., Inc.*, 2015 WL 13861963, at *3 (S.D. Ind. May 11, 2015) (financial status relevant only as to punitive damages against party defendant); *see also Bruhn Farms Joint Venture v. Fireman’s Fund Ins. Co.*, 2017 WL 752282, at *12 (N.D. Iowa Feb. 27, 2017) (party “may not introduce evidence of [parent company’s] wealth”).

Second, evidence of the identity of Prelude’s owner and the private-equity sourcing of its capital funding should be excluded because it is irrelevant to the issues presented in this case and invites

prejudice. To illustrate, in *Medical Mutual of Ohio v. Air Evac EMS, Inc.*, the court found no need to disclose to the jury that the defendant’s “owners are private equity firms, let alone the specific identity of any owner,” which were irrelevant and inadmissible. 2019 WL 4573700, at *2 (N.D. Ohio Sept. 20, 2019) (citing Fed. R. Evid. 401, 402); *see also Karlo v. Pittsburgh Glass Works, LLC*, 2014 WL 1317595, at *21 (W.D. Pa. Mar. 31, 2014) (denying amendment of pleadings to “include irrelevant averments” of ownership by non-party “private equity firm with \$8.0 billion in assets”), *aff’d*, 849 F.3d 61 (3d Cir. 2017). The *Air Evac EMS* court also cited the threat of prejudice that references to private equity ownership could pose as separate grounds for exclusion. 2019 WL 4573700, at *2 (citing Fed. R. Evid. 403).

Finally, although the jury will not be called to award damages against PFC at trial, Chart may still attempt to influence the jury as to PFC’s percentage of fault in this case with references to PFC’s financial relationship with Prelude and/or the financial consequences of a hypothetical verdict against PFC. Such prejudicial tactics should likewise be barred at trial. *See Bruhn Farms*, 2017 WL 752282, at *12 (“Plaintiff may not ... make any argument that the jury should in any way consider the relationship between defendant and [parent] in determining any damage award in this case.”); *Cellular Commc’ns Equip. LLC v. Apple Inc.*, 2016 WL 11496010, at *1 (E.D. Tex. Sept. 2, 2016) (excluding “argument, evidence, testimony, or reference ... to [plaintiff’s] financial relationship to its parent company ... or to financial consequences ... of a verdict”).

CONCLUSION

Plaintiffs respectfully request that the Court preclude Chart from entering Trial Exhibit 153 into evidence at trial, from entering any other exhibits into evidence that reference Prelude’s owners, capital funding, ties to private equity, or financial relationship with PFC, and from asking any witnesses about or otherwise referencing the same.

Dated: April 14, 2021

Respectfully submitted,

By: /s/ Amy M. Zeman

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE PACIFIC FERTILITY CENTER
LITIGATION

Case No. 3:18-cv-01586-JSC

**DEFENDANT CHART INC.'S
OPPOSITION TO PLAINTIFFS'
MOTION IN LIMINE NO. 6: NON-
PARTY FINANCES**

Hearing: April 29, 2021
Time: 2:00 p.m.
Judge: Hon. Jacqueline Scott Corley
Place: Courtroom F, 15th Floor
Trial: May 20, 2021

1 **I. INTRODUCTION**

2 Plaintiffs' motion *in limine* No. 6 requests the Court to exclude all evidence or testimony
3 related to Prelude Fertility's (Prelude) owners, capital funding, ties to private equity, or financial
4 relationship with Pacific Fertility Center (PFC). (Pls.' MIL No. 6 at 2:20-23.) Like the requests
5 in Plaintiffs' motion *in limine* No. 7, their requests here are overbroad and premature, and should
6 be denied to the extent they seeks to exclude potentially relevant and admissible evidence.

7 **II. ARGUMENT**

8 Primarily, Plaintiffs are seeking to exclude evidence related to third parties, over whom
9 they have little to no control. Plaintiffs cannot predict what testimony will arise at trial from
10 representatives of these third parties and thus open the door to introduce the evidence they now
11 attempt to exclude. It is simply too early to exclude such evidence outright. PFC's and Pacific
12 MSO's acts and wrongdoing are obviously at issue in this case and any evidence related to
13 wrongdoing by their employees or agents, or anyone with control over policies and procedures is
14 relevant. Indeed, evidence regarding Prelude's role in policies created, or in marketing and public
15 relations before and after the subject incident could potentially be relevant during cross-
16 examination at trial. This is exemplified by Plaintiffs' counsel's extensive questioning of Alden
17 Romney (CEO of Pacific MSO and CAO of PFC) regarding Prelude's and Lee Equity's role and
18 control over services provided at PFC. (*See* September 10, 2019 Deposition of Alden Romney.)

19 PFC's financial status is potentially relevant as well. For example, if PFC representatives
20 testify to any financial hardships purportedly caused by the subject incident, whether to elicit
21 sympathy or for any other yet-to-be-known reason, then PFC's financial status and relationship
22 with Prelude may become very relevant.

23 Further, the financial status of third parties, whose testimony regarding their (not Plaintiffs)
24 financial status and relationships is not unfair or prejudicial to Plaintiffs. If such evidence becomes
25 relevant either through the third parties or plaintiffs themselves opening the door, Chart should be
26 able to introduce such evidence as necessary to defend this case. The Court should not provide an
27 outright bar of this evidence at this time.

1 **III. CONCLUSION**

2 WHEREFORE, Defendant Chart, Inc. respectfully requests this Honorable Court to deny
3 Plaintiffs' request to excluded all evidence or testimony related to Prelude Fertility's owners,
4 capital funding, ties to private equity, or financial relationship with PFC, and for any other relief
5 this Honorable Court may deem equitable and just.

6
7 Dated: April 15, 2021

Respectfully submitted,

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